



February 6, 2001

Ms. Ruth H. Soucy  
Deputy General Counsel  
Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2001-0468

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 143981.

The Comptroller of Public Accounts (the "comptroller") received a request for a transcription of a specified administrative hearing conducted by an administrative law judge employed by the comptroller. You explain that no transcription of the hearing exists and that the requestor has therefore modified the request to seek an audio tape recording of the hearing, which you have submitted for our review. You ask whether the audio tape is excepted from disclosure in whole or in part under section 552.101 of the Government Code in conjunction with section 111.006 of the Tax Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 111.006(a)(2) provides that information "secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer" is confidential. Tax Code § 111.006(a)(2). Construing the statutory predecessor to section 111.006(a)(2), this office determined that the provision does not make confidential the entirety of an administrative decision resulting from an administrative hearing conducted

by the comptroller, but the provision does require that the hearings be conducted in private and that taxpayer identifying information be withheld from the decisions resulting from the hearing. *See* Attorney General Opinion No. H-223 (1974). In concluding that the hearings are not subject to the Open Meetings Act and should be conducted in private, this office stated that information made confidential under the statutory predecessor to section 111.006(a)(2) is precisely the kind of information which the comptroller must consider at the hearings. *Id.* at 4.

Our review of the submitted audiotape indicates that it contains information made confidential under section 111.006(a)(2). You assert with respect to the identity of the taxpayer that the audio tape recording "is identifying in its entirety." Alternatively, you assert that the confidential information on the audio tape is inextricably combined with the non-confidential information. We thus understand that the comptroller has no means of editing the audio tape to release only the non-confidential information. We therefore conclude that the submitted audio tape recording must be withheld in its entirety pursuant to section 552.101 in conjunction with section 111.006(a)(2) of the Tax Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

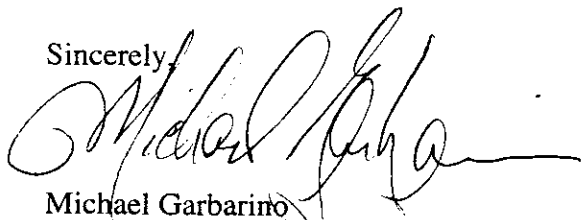
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino", written over a horizontal line.

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/seg

Ref: ID# 143981

Encl. Submitted documents

cc: Mr. Eric L. Stein  
Ryan & Company  
100 Congress Avenue, Suite 1900  
Austin, Texas 78701  
(w/o enclosures)